

1  
04/04/00  
Complaint

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
Miami Division

NELSON BALLADARES, an individual,  
Plaintiff,

vs.

Case No.: 00-  
FBN: 0780715

CITY OF HIALEAH, a Municipal Corporation,  
OFFICER WILLIE LEONARD,  
Defendants.

**COMPLAINT**

COMES NOW the Plaintiff, Nelson Balladares (hereinafter referred to as "Nelson"), by and through his undersigned counsel and files this COMPLAINT, sues Defendants, City of Hialeah, a municipal Corporation (hereinafter referred to as "City of Hialeah") and Officer Willie Leonard (hereinafter referred to as "Leonard") and states as follows:

**GENERAL ALLEGATIONS**

This is a civil action pursuant to 42 U.S.C. section 1983 seeking damages against Defendant, Leonard for committing acts, under color of law, which deprived Plaintiff of rights secured under the Constitution and laws of the United States. Pursuant to this statute it is alleged that Defendant, Leonard: deprived Plaintiff of his liberty without due process of law and made an unreasonable search and seizure of Plaintiff, thereby depriving Plaintiff of his rights, privileges and immunities as guaranteed by the Fourth, Fifth and Fourteenth Amendments to the Constitution of the United States. Plaintiff also brings related pendant claims pursuant to State Law against Defendants, City of Hialeah and Leonard for False Imprisonment.

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## **JURISDICTION**

1. This action is brought pursuant to the provisions of 42 U.S.C. section 1983 and 1988. Jurisdiction is based upon the provisions of 28 U.S.C. sections 1331, 1343 as well as the supplemental jurisdiction of this Court, as codified in 28 U.S.C. section 1367. All the acts complained of occurred in Dade County, Florida, making venue in the Southern District of Florida, Miami, Division, proper. All conditions precedent to the institution of this action have been satisfied or have been waived.

## **PARTIES**

2. Plaintiff, Nelson, is and was at all times material a resident of Dade County, Florida and a citizen of the United States.

3. Defendant, City of Hialeah, is a municipality existing pursuant to Florida law and a political subdivision of the State of Florida. The Defendant, City of Hialeah, maintained and operated a police department known as the City of Hialeah Police Department for which the individual Defendant, at all material times, was employed.

4. Defendant, Leonard, is and was at all times material, an officer with the City of Hialeah Police Department.

5. At all times material all Defendants, except as set forth below, were acting within the scope of their respective employment and pursuant to the laws, customs, ordinances, policies and practices of the City of Hialeah Police Department. All Defendants, except as set forth below, were acting at all material times under color of State Law.

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and in anticipation of getting him as a witness to testify against Carlos Davila. These actions were wholly arbitrary and without any justification.

20. As a direct and proximate result of this act of depriving Plaintiff, Nelson, of this liberty, Plaintiff, Nelson, sustained injuries, both physical and emotional, and suffered great mental anguish, embarrassment, humiliation, deprivation of liberty and disgrace as well as injury to his reputation.

21. Plaintiff reserves the right to amend this Complaint for damages to include a claim for punitive damages after a proffer has been made and approved by this Honorable Court pursuant to Fla. Stat. section 768.72.

Wherefore, Plaintiff, Nelson, demands judgment for damages against Defendant, Leonard, in an amount within the jurisdictional limits of the Court, exclusive of interest and costs; and demands a trial by jury of all issues triable as of right by jury.

Respectfully Submitted,

Law Offices of Joseph S. Shook, Esq.  
and Associates,

BY: 

Joseph S. Shook, Esq.  
75 Valencia Ave., # 4<sup>th</sup> Floor  
Coral Gables Fl, 33134  
Phone (305) 446-4177  
FBN: 0780715

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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
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NELSON BALLADARES, an individual,  
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CITY OF HIALEAH, a Municipal Corporation,  
OFFICER WILLIE LEONARD,  
Defendants.

/

**EXHIBIT "A"**

1. Letter to city of Hialeah and Return receipt.

LAW OFFICE OF

**JOSEPH S. SHOOK & ASSOCIATES**

75 VALENCIA AVENUE  
4TH FLOOR  
CORAL GABLES, FLORIDA 33134

PHONE: (305) 446-4177  
FAX: (305) 446-4565

June 10, 1999

U.S. FEDERAL COURT, S.D., FL.  
PA STATE BAR

The City of Hialeah  
Mayor Raul Martinez  
501 Palm Ave.  
Hialeah FL, 33010

**CERTIFIED/RETURN RECEIPT**

Re: Notice of Claim by Mr. Nelson Balladares, against the City of Hialeah, Florida and its agents: Police officers of the City of Hialeah, for damages for a 42 USC section 1983 violation, assault/battery, negligence, false arrest/imprisonment and malicious prosecution pursuant to Florida Statute section 768.28 (6)(a).

Dear Honorable Martinez:

This office represents Mr. Nelson Balladares relative to injuries he sustained as a result of the actions and omissions of the City of Hialeah, Florida and its agents: Police officers of the City of Hialeah, Florida. These actions and omissions are in violation of 42 USC 1983 and represent actions constituting assault/battery, negligence false arrest/imprisonment and malicious prosecution.

On April 24, 1999, Mr. Nelson Balladares was battered, accosted, harassed, threatened, deprived of his liberty and humiliated by the City of Hialeah Police. This unlawful action by the City of Hialeah and its agents was accomplished without any justification for the force used and without any reasonable justification for the arrest. The City of Hialeah, through their agent's abuse of authority, caused Mr. Balladares to suffer permanent injury and experience extreme mental pain and anguish from the arrest without cause. Mr. Balladares was jailed for days and treated as an animal as a result of this baseless arrest and harassment. To this day he suffers the humiliation, fear, and anguish that were attendant with the brutal and false arrest.

We hereby make a demand for the statutory limit of damages in the amount of \$100,000.00.

Sincerely,

  
Joseph S. Shook, Esq.

J.S.S.:a.a.

<b>SENDER:</b> <input type="checkbox"/> Complete items 1 and/or 2 for additional services. Complete items 3, 4a, and 4b. <input type="checkbox"/> Print your name and address on the reverse of this form so that we can return this card to you. <input type="checkbox"/> Attach this form to the front of the mailpiece, or on the back if space does not permit. <input type="checkbox"/> Write "Return Receipt Requested" on the mailpiece below the article number. <input type="checkbox"/> The Return Receipt will show to whom the article was delivered and the date delivered.		I also wish to receive the following services (for an extra fee): 1. <input type="checkbox"/> Addressee's Address 2. <input type="checkbox"/> Restricted Delivery
3. Article Addressed to: <i>The City of Hialeah            Mayor, Mr. Martinez            So, Andrew            Hialeah, FL, 33010</i>		4a. Article Number <i>73319777258</i>
5. Received By. (Print Name) <i>Orlando Rodriguez</i>		4b. Service Type <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Certified <input type="checkbox"/> Express Mail <input type="checkbox"/> Insured <input checked="" type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> COD
6. Signature (Addressee or Agent) <i>Orlando Rodriguez</i>		7. Date of Delivery <i>11/19/99</i>
		8. Addressee's Address (Only if requested and fee is paid)

PS Form 3811, December 1994

102595-99 B-0223 Domestic Return Receipt

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04/04/00  
Complaint

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
Miami Division**

NELSON BALLADARES, an individual,  
Plaintiff,

vs.

Case No.: 00-  
FBN: 0780715

CITY OF HIALEAH, a Municipal Corporation,  
OFFICER WILLIE LEONARD,  
Defendants.

**EXHIBIT "B"**

1. Letter to State Department of Insurance, Insurance Commissioner and Return receipt.

LAW OFFICE OF

**JOSEPH S. SHOOK & ASSOCIATES**

75 VALENCIA AVENUE  
4TH FLOOR  
CORAL GABLES, FLORIDA 33134

PHONE: (305) 446-4177

FAX: (305) 446-4565

June 10, 1999

U.S. FEDERAL COURT, S.D., FL.  
PA STATE BAR

State Department of Insurance  
Att.. Insurance Commissioner  
The Capitol,  
Tallahassee FL, 32399-0300  
(904)922-3100

**CERTIFIED/ RETURN RECEIPT**

**Re: Notice of Claim by Mr. Nelson Balladares against the City of Hialeah and its agents: Police officers of the City of Hialeah, for damages for a 42 USC 1983 violation, negligence, assault/battery, false arrest/imprisonment and malicious prosecution pursuant to Florida Statute section 768.28(6)(a).**

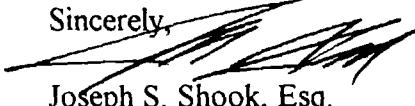
Dear Commissioner:

This office represents Mr. Nelson Balladares relative to injuries he sustained as a result of the actions and omissions of the City of Hialeah, FL and its agents. Police Officers of the City of Hialeah. These actions and omissions are in violation of 42 USC 1983 and represent actions constituting assault/battery, negligence, false arrest/imprisonment and malicious prosecution.

On April 24, 1999, Mr. Balladares was harassed, threatened, battered and wrongfully deprived of his liberty by the Police officers of the City of Hialeah. This unlawful action by the City of Hialeah and its agents was accomplished without any justification for the force used and without any reasonable justification for the arrest. The City of Hialeah, through their agent's abuse of authority, caused Mr. Balladares to suffer permanent injury and experience extreme mental pain and anguish from the arrest without cause. Mr. Balladares was jailed for days and treated as an animal as a result of this baseless arrest and harassment. To this day he suffers the humiliation, fear, and anguish that were attendant with the brutal and false arrest.

We hereby make a demand for the statutory limit of damages in the amount of \$100,000.00.

Sincerely,

  
Joseph S. Shook, Esq.  
J.S.S.:a.a.:

Is your RETURN ADDRESS completed on the reverse side?	<b>SENDER:</b>		<p>I also wish to receive the following services (for an extra fee):</p> <p>1. <input type="checkbox"/> Addressee's Address      2. <input type="checkbox"/> Restricted Delivery</p>
	<input type="checkbox"/> Complete items 1 and/or 2 for additional services. <input type="checkbox"/> Complete items 3, 4a, and 4b. <input type="checkbox"/> Print your name and address on the reverse of this form so that we can return this card to you. <input type="checkbox"/> Attach this form to the front of the mailpiece, or on the back if space does not permit. <input type="checkbox"/> Write "Return Receipt Requested" on the mailpiece below the article number. <input type="checkbox"/> The Return Receipt will show to whom the article was delivered and the date delivered.		
	3. Article Addressed to:		
	<i>State of Florida      Insurance      Commissioner      The Capitol      Department of Insurance 32317-0500      SUPER</i>		
	4a. Article Number		
	<input type="checkbox"/> Registered <input checked="" type="checkbox"/> Certified <input type="checkbox"/> Express Mail <input type="checkbox"/> Insured <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> COD		
	7. Date of Delivery		
	<input type="checkbox"/> Addressee's Address (Only if requested and fee is paid)		
	8. Addressee's Address (Only if requested and fee is paid)		

PS Form 1811, December 1994

102595-99-B-0223 Domestic Return Receipt

# CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I (a) PLAINTIFFS

MR. NELSON BALLADARES

## DEFENDANTS

CITY OF HIALEAH AND WILLIE LEONARD

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF DADE  
(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT DADE  
(IN U.S. PLAINTIFF CASES ONLY)

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

ATTORNEYS (IF KNOWN)

JOSEPH S. SHOOK, ESQ. AT 75 VALENCIA AVE, 4TH FL.  
CORAL GABLES FL, 33134 (305) 0446-4177

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE  
TRACT OF LAND INVOLVED

## (d) CIRCLE COUNTY WHERE ACTION AROSE:

DADE, MONROE, BROWARD, PALM BEACH, MARTIN, ST. LUCIE, INDIAN RIVER, OKEECHOBEE, HIGHLANDS

## II. BASIS OF JURISDICTION

(PLACE AN X ONE BOX ONLY)

<input type="checkbox"/> 1. U.S. Government Plaintiff	<input checked="" type="checkbox"/> 3. Federal Question (U.S. Government Not a Party)
<input type="checkbox"/> 2. U.S. Government Defendant	<input type="checkbox"/> 4. Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Case Only)

Citizen of This State	<input type="checkbox"/> PTF 1	<input type="checkbox"/> DEF 1	(PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)	<input type="checkbox"/> PTF 4	<input type="checkbox"/> DEF 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated or Principal Place of Business in This State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 6	<input type="checkbox"/> 6
			Foreign Nation		

## IV. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)

DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)

42 USC 1983

IVa. 3 days estimated (for both sides) to try entire case

## V. NATURE OF SUIT

(PLACE AN X IN ONE BOX ONLY)

A CONTACT	A TORTS	B FORFEITURE PENALTY	A BANKRUPTCY	A OTHER STATUS
<input type="checkbox"/> 110 Insurance	<b>PERSONAL INJURY</b>	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 States Reappointment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<b>A PROPERTY RIGHTS</b>	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 450 Commerce/ICC Rates/etc. B
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 650 Airline Regs	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl Veterans) B	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 660 Occupational Safety/Health	<b>B SOCIAL SECURITY</b>	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits B	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 861 HIA (1395f)	<input type="checkbox"/> 850 Securities/Commodities Exchange
<input type="checkbox"/> 160 Stockholder's Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<b>A LABOR</b>	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 875 Customer Challenge 12USC3410
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 863 DWCD/WW (405(g))	<input type="checkbox"/> 891 Agricultural Act
<input type="checkbox"/> 195 Contract Product Liability		<input type="checkbox"/> 720 Labor Management Relations B	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 892 Economic Stabilization Act
		<input type="checkbox"/> 730 Labor Management Reporting & Disclosure Act	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 893 Environmental Matters
		<input type="checkbox"/> 740 Railway Labor Act	<b>A FEDERAL TAX SUITS</b>	<input type="checkbox"/> 894 Energy Allocation Ad
		<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 895 Freedom of Information Ad
		<input type="checkbox"/> 791 Employee Ret. Inc. Security Act B	<input type="checkbox"/> 871 IRS-Third Party 28 USC 7609	<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
				<input type="checkbox"/> 950 Constitutionality of State Statutes
				<input type="checkbox"/> 990 Other Statutory Actions * A or B
A REAL PROPERTY	A CIVIL RIGHTS	B PRISONER PETITIONS		
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motions to Vacate Sentence		
<input type="checkbox"/> 220 Foreclosure B	<input type="checkbox"/> 442 Employment	Habeas Corpus		
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 530 General		
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Other Civil Rights	<input type="checkbox"/> 535 Death Penalty		
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Welfare	<input type="checkbox"/> 540 Mandamus & Other		
<input type="checkbox"/> 290 All Other Real Property		<input type="checkbox"/> 550 Civil Rights		
		A or B		

## VI. ORIGIN

<input checked="" type="checkbox"/> 1. Original Proceeding	<input type="checkbox"/> 2. Removed From State Court	<input type="checkbox"/> 3. Remanded from Appellate Court	<input type="checkbox"/> 4. Refiled	<input type="checkbox"/> 6. Multidistrict Litigation	<input type="checkbox"/> 7. Appeal to District Judge from Magistrate Judgment
			<input type="checkbox"/> 5. Transferred from another district (Specify)		

VII. REQUESTED  
IN COMPLAINT

CHECK IF THIS IS A

CLASS ACTION

DEMAND \$

JURY DEMAND:

YES

NO

VIII. RELATED  
CASE(S) IF ANY

(See Instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD